

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

SARAH HORTON, an individual,

Plaintiff,

vs.

GERARD LAMAITA, an individual, and
REBECCA MAIRS, an individual

Defendants.

Case No.:

COMPLAINT

PRAYER: \$231,544.00

NOT SUBJECT TO
MANDATORY ABITRATION

Filing Fee \$560.00
per ORS 21.160(1)(c)

1.

Plaintiff, Sarah Horton, by and through Counsel, Joshua B. Lay-Perez, of
HLP Law PC of HLP Law PC, alleges:

2.

At all times material herein, Plaintiff is resided in Multnomah County,
Oregon, and was the owner-guardian of Mylo, Plaintiff's emotional support Persian
mix cat, who was 11-months old as of February 2018.

3.

At all times material herein, Defendant Gerard LaMaita was a residential
landlord and leased property to Plaintiff in Multnomah County, Oregon.



1 4.

2 Defendant Rebecca Mairs' domicile is unknown to Plaintiff at this time.

3 5.

4 The acts or occurrence alleged in this complaint occurred in Multnomah
5 County, Oregon.

6 6.

7 Venue and Jurisdiction and appropriate in Multnomah County.

8 7.

9 At all times material herein, Plaintiff was a student in the Doctor of
10 Naturopathic Medicine (N.D.) program at the National University of Natural
11 Medicine, in Portland Oregon.

12 8.

13 On or about January 9, 2018, Plaintiff entered into a residential lease
14 agreement with Defendant LaMaita (hereinafter "the Lease"), for the premises
15 located at 1511 North Colfax Street, in Portland, Oregon.

16 9.

17 Plaintiff paid Defendant LaMaita a security deposit of \$1,090.00, and prorated
18 rent of \$808.70. The Lease agreement was for the period of January 9, 2018 through
19 February 28, 2019, and required monthly rental payments of \$1,090.00 per month.

20
21 //



10.

During the initial walkthrough, Plaintiff noted wires hanging down from the wall near the ceiling in the hallway, which Defendant LaMaita said was from an old doorbell he intended to remove. Defendant LaMaita also agreed to touch up unfinished areas with paint.

11.

On or about January 17, 2018, Plaintiff discovered black mold infesting the freezer, and that the kitchen outlet did not function. Per the Lease, Plaintiff promptly notified Defendant LaMaita of her discovery. Defendant LaMaita asked Plaintiff to measure the refrigerator for him, to which she agreed to do so as soon as she had an opportunity.

12.

Impatient, Defendant LaMaita ordered a 66" refrigerator without receiving the measurement or obtaining a measurement himself. However, the space in would only fit a 59" refrigerator, and so Defendant LaMaita had to either order a different refrigerator, or remove cabinets to make room. Plaintiff was amenable to whatever solution was most cost effective for Defendant LaMaita.

13.

Defendant LaMaita arrived on January 19, 2018 at the Plaintiff's dwelling unit to look at the cabinets and consider whether to remove them, explaining that he used



1 to be a cabinetmaker. Mr. LaMaita informed Plaintiff that he had someone coming
2 to look.

3 14.

4 While Plaintiff and Defendant LaMaita awaited the other person's arrival,
5 Mr. LaMaita complained about the odor. Plaintiff explained that her emotional
6 support cat had not yet been neutered, but that the smell likely came from her
7 belongings from before she had moved in. Despite this, Defendant Lamaita
8 continued to harass Plaintiff about the odor with a flood of derogatory adjectives,
9 despite her assurances she was taking steps to resolve the issue.

10 15.

11 Plaintiff called and scheduled the appointment promptly, and took Mylo to be
12 neutered on January 22, 2018. During the visit, Mylo was also microchipped and
13 given his FRVCP vaccination. Mylo's physical exam was perfect with no
14 abnormalities.

15 16.

16 The next day, January 23, 2018, Defendant LaMaita texted Plaintiff, telling
17 her that he wanted to be present when the refrigerator was delivered.

18 17.

19 On January 24, 2018, Defendant LaMaita texted Plaintiff to ask her if she
20 could clean up the cat spray before it set into the tile grout. Plaintiff explained that
21 she had done so the night before. Plaintiff also informed Defendant LaMaita that she



1 could not continue to live in a residence without a mold-free freezer, or in one where
2 she found mold behind the sink, in the window sills, and elsewhere in the apartment.
3 She explained that black mold is a neurotoxin and was deeply concerned, as she too,
4 needed a clean living space. Defendant LaMaita responded, "OK thanks."

5 18.

6 On January 25, 2018, the refrigerator was delivered. Plaintiff called Defendant
7 LaMaita to notify him, per his request. The delivery people quickly determined that
8 the refrigerator would not fit. Mr. LaMaita then ordered the delivery people to put
9 the refrigerator in front of her back door. Fearing liability for blocking a fire exit, the
10 delivery people refused. Mr. LaMaita insisted, explaining his cabinetmaker would
11 arrive soon. Based on Defendant LaMaita's request the delivery people brought the
12 refrigerator in and placed it where he requested in violation of applicable fire code,
13 which rendered the back door unusable. Defendant LaMaita then continued to insult
14 Plaintiff, while rummaging through her boxes. Plaintiff was able to move the
15 refrigerator slightly, allowing limited access through the back door.

16 19.

17 On January 26, 2018, Plaintiff left for school around 7:45 a.m., but realized
18 that she forgot her phone inside. When she attempted to re-enter through the front-
19 door, the door would not budge from either side, despite being unlocked. Later that
20 evening, Plaintiff discovered a loose screw that had wedged between the door and
21 the lock, likely the result of negligent installation.



1 20.

2 On January 29, 2018, Ms. Horton scheduled movers to collect and deposit her
3 stored furniture at the premises. When they arrived, they could not open the front
4 door, despite it being unlocked, and were unable to enter through the back door, due
5 to the large refrigerator.

6 21.

7 On February 1, 2018, Plaintiff contacted Defendant LaMaita to ask how he
8 would like to receive rent money. He again inquired about the cat spraying.

9 22.

10 On February 2, 2018, Defendant LaMaita appeared at the dwelling unit to
11 collect the rent money. At the time, Plaintiff explained how the front door was
12 largely inoperable. Plaintiff's boyfriend, Matt Mosgaard offered to fix the door,
13 despite it being Defendant LaMaita's responsibility. Defendant LaMaita consented
14 to Mr. Mosgaard repairing the door. Defendant LaMaita again mentioned the cat
15 urine odor, and told Plaintiff that maybe he needed to be an outdoor cat.

16 23.

17 On February 9, 2018, with less than 24 hours' notices, Defendant LaMaita
18 texted defendant requesting that the cabinetmaker come out that day. When Plaintiff
19 informed Defendant that should would be home at 2 p.m., Defendant said that he
20 was at the mercy of the cabinetmaker's schedule, and that he would let the cabinet
21 maker in himself.



1 24.

2 On February 11, 2018, after experience symptoms of mold toxicity, and
3 despite her full medical school class schedule, Plaintiff spent roughly seven hours
4 cleaning each of the three wall heaters, which were caked in dust, filth, and grime. It
5 was obvious to Plaintiff that the wall heater had not been cleaned in quite a long
6 time, if ever.

7 25.

8 On February 14, 2018, without 24 hours' notice, consent, or a legitimate
9 emergency, Defendant LaMaita entered Plaintiff's dwelling unit while she was not
10 home.

11 26.

12 On February 15, 2018, Defendant LaMaita texted Plaintiff again, saying his
13 cabinet maker was coming out at noon, which was roughly four hours from the time
14 of the message. Defendant LaMaita also stated that Plaintiff has an obligation under
15 the lease that the interior be "kept up." After complaining to Defendant LaMaita
16 about heaters and being ill from the mold, Defendant LaMaita responded, "We need
17 to talk about some things. Are you home this evening?" After explaining that she
18 would be out most of the day, Defendant LaMaita agreed to meet on the 16th.
19 Despite that, Defendant LaMaita entered the dwelling unit, again without consent,
20 24 hours' notice, or a legitimate emergency.



1 27.

2 When Defendant LaMaita accessed the dwelling unit at roughly 1 p.m., he
3 was greeted by Mr. Mosgaard. Defendant LaMaita began taking photographs of the
4 Plaintiff's dwelling unit without consent, exclaiming that Plaintiff and her boyfriend
5 lived like animals. For nearly 45-minutes, Defendant LaMaita insulted Plaintiff, her
6 living conditions, Mylo, and brought Mr. Mosgaard to another apartment to show
7 him what clean living resembled. Defendant LaMaita had complete disregard for the
8 fact that Plaintiff's furniture was delivered just two weeks prior, and that she was in
9 school six days a week in a rigorous program. At roughly 2 p.m., the purported
10 cabinetmaker finally appeared, was there for a few moments, spoke briefly to
11 Defendant LaMaita, and left, without any discussion about cost or anything relevant
12 to fixing the cabinet.

13 28.

14 After returning from school that evening, Plaintiff and her boyfriend
15 discovered Defendant Mairs sweeping the back sidewalk, which appeared odd to
16 them, given the impending snowstorm. They could see movement in Plaintiff's
17 apartment and noted that the lights were on. Defendant Mairs then entered the
18 basement for roughly 5 minutes, and then emerged with a broom and dust pan.
19 Defendant LaMaita, dressed in a black hoodie, was seen exiting the back door of
20 Plaintiff's dwelling unit. Both Defendants proceeded to the front of the building and
21 left.



1 29.

2 The next day, February 16, 20018, Plaintiff sent a long text message to
3 Defendant LaMaita, explaining her work load and how she felt better after the
4 heaters were cleaned out. Defendant LaMaita responded by requesting they meet at
5 4:30 that day. Plaintiff reluctantly agreed, given the difficult relationship she had
6 with Defendant LaMaita.

7 30.

8 When Plaintiff returned home that day around 2 p.m., she noted a spot of
9 foamy liquid on the floor in the living room. She then noticed that Mylo was not
10 acting like his normal self, but instead sluggish and depressed. Mylo was despondent
11 and nonresponsive, and didn't even react with Plaintiff called for him. Mylo then
12 followed Plaintiff into the bathroom and laid down in the litterbox, which was also
13 unusual. Upon picking Milo up, Plaintiff noted two more small puddles of frothing
14 liquid in the litter.

15 31.

16 Alarmed, Plaintiff decided to take Mylo to the vet. She contacted Defendant
17 LaMaita to tell him that she needed to reschedule because she was taking Mylo to
18 the vet. Defendant LaMaita responded by saying Okay, and then admonished
19 Plaintiff for having nothing on the front porch except for one mat, and the grill and
20 patio furniture in the back.



1 32.

2 At roughly 3 p.m., Plaintiff presented Mylo at DoveLewis Veterinary
3 Emergency & Specialty Hospital. She begged the staff to save him. The vet came
4 back with terrible news, explaining that Mylo was in end-stage renal failure and had
5 lost 90% function in his kidneys. At best, with intensive care, the Vet estimated a few
6 weeks to a month of life left and that Mylo would never recover.

7 33.

8 Despite aggressive treatment, Mylo's condition worsened, and the vet
9 recommended euthanasia. Mylo died at approximately 3 a.m. on February 17, 2018
10 after hours of suffering. The likely cause of death was toxins from a non-natural
11 substance.

12 34.

13 Over the next few days, Plaintiff discovered a bottle of anti-freeze in the
14 basement. Despite the significant layer dust, a fresh hand print was on the bottle, to
15 indicate recent use.

16 35.

17 On February 21, 2018, Defendant LaMaita texted to inform Plaintiff that he
18 would come check that the area was free of clutter.

19 36.

20 On or about February 25, 2018, Plaintiff posted signs on her front window and
21 back door that the area was under 24-hour audio and video surveillance.



1 37.

2 On February 26, 2018, a city health inspector appeared and conducted an
3 investigation. The inspector issued several violations to Defendant LaMaita related
4 to Plaintiff's dwelling unit.

5 38.

6 Around this time, Plaintiff received an anti-freeze home test kit and tested the
7 water in Mylo's bowl. The test results were positive for anti-freeze.

8 39.

9 Around midnight the same day, February 26, 2018, both Defendants were
10 recorded on video entering Plaintiff's dwelling unit while Plaintiff was not home,
11 without notice, consent, or an emergency.

12 40.

13 Defendant Mairs said that it did not smell like cat urine anymore, to which
14 Defendant LaMaita replied that he did not figure it would.

15 41.

16 Defendant LaMaita texted Plaintiff the next day, February 27, 2018,
17 indicating he would need to come in and get another set of measurements and
18 photographs for another estimate.

19 42.

20 The death of Mylo caused Plaintiff to enter a terror spiral. For several months,
21 she struggled to sleep or eat. Unable to cope and still grieving, Plaintiff failed all of



1 her classes that term. As a result of the grades, she was ineligible for financial aid,
2 and unable to continue in her program, despite having maintained a high grade point
3 average, and being nearly halfway through the program.

4 43.

5 On March 4, 2018, Defendant LaMaita appeared at the property under the
6 guise of doing yard work, adorned in a hat and sunglasses. Plaintiff went to retrieve
7 some belongings from her car, when Defendant LaMaita approached her. Plaintiff
8 explained that she had no time to talk, and aborted her trek to her car, as she did not
9 want to talk with Defendant LaMaita. Mr. Mosgaard left the apartment to go to the
10 car himself, and Plaintiff stepped out to ask him to retrieve the needed items. When
11 Plaintiff stepped out, Defendants cornered Plaintiff on the doorstep. Defendant
12 Mairs insisted that she wanted to meet with Plaintiff when she had time, to make
13 sure "everyone is doing well."

14 44.

15 On March 6, 2018, Defendant LaMaita appeared at roughly 11:30 a.m. and
16 pounded on the door without any advanced notice. Plaintiff was at school during this
17 time. Defendant LaMaita texted a picture of a dish with a water bottle in it and the
18 front door with a mop propped against it, complaining about the perceived disorder
19 of the porch. At roughly 5:45 p.m., Defendant LaMaita again appeared at the
20 premises uninvited. When Mr. Mosgaard sent pictures to Defendant LaMaita about
21 the condition of the adjoining tenant's porches in worse condition, and asking that



1 he leave Plaintiff alone, Defendant LaMaita appeared and cleaned off the other
2 tenant's porches himself.

3 45.

4 On or about March 15, 2018, at 6 p.m., Defendant LaMaita posted a 24-hour
5 notice of intent to enter and inspect. Concerned about the inconvenience in the
6 evening, Plaintiff's prior attorney send an admonishment to Defendant LaMaita,
7 denying access under ORS 90.322(1)(e)(ii), and ORS 90.22(1)(f) on March 16, 2018.

8 46.

9 On or about March 20, 2018, Defendant LaMaita, through his attorney, Mark
10 Busch, issued a 14/30-day notice threatening to terminate the tenancy for
11 "unreasonably withholding consent from the landlord to enter [the dwelling unit]."
12 Defendant LaMaita's notice also advised that Defendant LaMaita would refuse rent
13 tender for April if Plaintiff had not cured the defects before then.

14 47.

15 On or about March 26, 2018, Defendant LaMaita installed three surveillance
16 cameras, all pointed at Plaintiff's dwelling unit, and covering both entrances.

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First Cause of Action

(Unlawful Access – ORS 90.322)

Count 1 - (Against Defendant LaMaita Only)

48.

Plaintiff hereby incorporates by reference, each and every allegation set forth in paragraphs 1 through 47, inclusive, and realleges as if they were fully set forth herein.

49.

As alleged herein, Defendant LaMaita accessed Plaintiff's dwelling unit without consent, proper notice, or without an emergency, in violation of ORS 90.322 on February 14, 2019.

50.

Pursuant to ORS 90.322(8), Plaintiff is entitled to statutory damages in the amount of \$1,090.00. Plaintiff is also entitled to recover her reasonable attorney fees per ORS 90.255.

//



1 **Count 2 - (Against Defendant LaMaita Only)**

2 51.

3 Plaintiff hereby incorporates by reference, each and every allegation set forth
4 in paragraphs 1 through 47, inclusive, and realleges as if they were fully set forth
5 herein.

6 52.

7 As alleged herein, Defendant LaMaita accessed Plaintiff's dwelling unit
8 without consent, proper notice, or without an emergency, in violation of ORS 90.322
9 on February 15, 2019 at approximately 1 p.m.

10 53.

11 Pursuant to ORS 90.322(8), Plaintiff is entitled to statutory damages in the
12 amount of \$1,090.00. Plaintiff is also entitled to recover her reasonable attorney fees
13 per ORS 90.255.

14
15 **Count 3 - (Against Defendant LaMaita Only)**

16 54.

17 Plaintiff hereby incorporates by reference, each and every allegation set forth
18 in paragraphs 1 through 47, inclusive, and realleges as if they were fully set forth
19 herein.

20
21 //



1 55.

2 As alleged herein, Defendant LaMaita accessed Plaintiff's dwelling unit
3 without consent, proper notice, or without an emergency, in violation of ORS 90.322
4 on February 15, 2019 at approximately 9 p.m.

5 56.

6 Pursuant to ORS 90.322(8), Plaintiff is entitled to statutory damages in the
7 amount of \$1,090.00. Plaintiff is also entitled to recover her reasonable attorney fees
8 per ORS 90.255.

9
10 **Count 4 (Against Both Defendants)**

11 57.

12 Plaintiff hereby incorporates by reference, each and every allegation set forth
13 in paragraphs 1 through 47, inclusive, and realleges as if they were fully set forth
14 herein.

15 58.

16 As alleged herein, Defendant LaMaita together with Defendant Mairs
17 accessed Plaintiff's dwelling unit without consent, proper notice, or without an
18 emergency, in violation of ORS 90.322 on February 26, 2018.

19
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1 59.

2 Pursuant to ORS 90.322(8), Plaintiff is entitled to statutory damages in the
3 amount of \$1,090.00. Plaintiff is also entitled to recover her reasonable attorney fees
4 per ORS 90.255.

5
6 **Second Cause of Action**

7 **(Retaliation – ORS 90.385)**

8 **(Against Defendant LaMaita Only)**

9 60.

10 Plaintiff hereby incorporates by reference, each and every allegation set forth
11 in paragraphs 1 through 47, inclusive, and realleges as if they were fully set forth
12 herein.

13 61.

14 Plaintiff, through counsel, asserted a protected right by refusing Landlord
15 access on March 16, 2018.

16 62.

17 Defendant LaMaita retaliated against Plaintiff after she asserted this right by
18 serving Plaintiff a notice of intent to terminate the tenancy on March 20, 2018 due to
19 her refusal.

20
21 //



1 63.

2 Plaintiff is entitled to statutory damages of \$2,180.00 pursuant ORS 90.375, in
3 addition to her reasonable attorney fees, pursuant to ORS 90.255
4

5 **Third Cause of Action**

6 **(Habitability – ORS 90.320)**

7 **(Against Defendant LaMaita Only)**

8 64.

9 Plaintiff hereby incorporates by reference, each and every allegation set forth
10 in paragraphs 1 through 47, inclusive, and realleges as if they were fully set forth
11 herein.

12 65.

13 For the period between February 14, 2018 through June 18, 2019, Landlord
14 failed to maintain the premises in a habitable condition.

15 66.

16 The premises was uninhabitable during this period because it substantially
17 lacked:

- 18 A) Effective waterproofing and weather protection of the roof and exterior walls,
19 including windows and doors;
20 B) Plumbing facilities that conform to applicable law in effect at the time of
21 installation, and maintained in good working order;



1 C) Adequate heating facilities that conform to applicable law at the time of
2 installation and maintained in good working order;

3 D) Electrical lighting with wiring and electrical equipment that conform to
4 applicable law at the time of installation and maintained in good working
5 order; AND

6 E) Safety from fire hazards;

7 67.

8 The premises had diminished habitability such that the value of the premises
9 during the period breach was \$0. As such, Plaintiff has been damaged in an amount
10 to be proven at trial but in no event more than \$4,360.00. Plaintiff is also entitled to
11 recover her reasonable attorney fees per ORS 90.255.

12
13 **Fourth Cause of Action**

14 **(Conversion)**

15 **(Against Defendant LaMaita Only)**

16 68.

17 Plaintiff hereby incorporates by reference, each and every allegation set forth
18 in paragraphs 1 through 47, inclusive, and realleges as if they were fully set forth
19 herein.

20
21 //



1 69.

2 Defendant LaMaita intentionally exercised dominion or control over Mylo, by
3 poisoning Mylo with anti-freeze.

4 70.

5 Defendant LaMaita's exercise of dominion or control seriously and
6 completely interfered with the rights of Plaintiff, who was the rightful owner of
7 Mylo.

8 71.

9 Defendant LaMaita's conduct caused Plaintiff extreme emotional distress and
10 mental anguish.

11 72.

12 As a result of Defendant LaMaita's conduct, Plaintiff has suffered economic
13 damages in an amount to be proven at trial but in no event more than \$75,000.00.

14 73.

15 As a result of Defendant LaMaita's conduct, Plaintiff has suffered
16 noneconomic damages in an amount to be proven at trial but in no event more than
17 \$150,000.00. Plaintiff is entitled to her reasonable attorney fees under ORS 90.255.

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1 **Fifth Cause of Action**

2 **(Intentional Infliction of Emotional Distress)**

3 ***Plead in the Alternative to the Fourth Cause of Action***

4 74.

5 Plaintiff hereby incorporates by reference, each and every allegation set forth
6 in paragraphs 1 through 47, inclusive, and realleges as if they were fully set forth
7 herein.

8 75.

9 Defendant LaMaita's intended to inflict severe mental and emotional distress
10 upon Plaintiff by poisoning Mylo.

11 76.

12 Defendant LaMaita's acts in fact caused Plaintiff to suffer such distress.

13 77.

14 Defendant LaMaita's actions constituted an extraordinary transgression of the
15 bounds of socially tolerable conduct.

16 78.

17 As a result of Defendant LaMaita's conduct, Plaintiff has suffered economic
18 damages in an amount to be proven at trial but in no event more than \$75,000.00.

19
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21 //

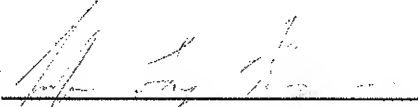


As a result of Defendant LaMaita's conduct, Plaintiff has suffered noneconomic damages in an amount to be proven at trial but in no event more than \$150,000.00. Plaintiff is entitled to her reasonable attorney fees under ORS 90.255.

WHEREFORE, Plaintiff prays for a judgment in her favor and against Defendants as follows:

1. On Plaintiff's First Cause of Action, damages in the amount of \$4,360.00;
2. On Plaintiff's Second Cause of Action, damages in the amount of \$2,180.00;
3. On Plaintiff's Third Cause of Action, damages in the amount of \$4,360.00;
4. On Plaintiff's Fourth Cause of Action, or alternatively, on Plaintiff's Fifth cause of action, damages in the amount of \$225,000.00;
5. On all of Plaintiff's claims, costs and disbursements associated with this action;
6. On all of Plaintiff's claims, reasonable attorney's fees; and
7. Any other such relief as this Court deems appropriate.

Dated this 14th of February, 2019.

/s/ 
 Joshua B. Lay-Perez, OSB 162312
 495 State Street, Ste 400
 Salem, OR 97301
 Joshua@HLPLawPC.com
 Attorney for Plaintiff

